IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5912 OF 2005
WITH
CRIMINAL APPLICATION NO.5913 OF 2005

M/s.Precimax Engineers
Ltd. and Ors. ..Applicants

Vs.

Shri.Kirtikumar M.Raichure
& Anr. ..Respondents

...
Mr.Ravindra L.Chalke Advocate for Applicants
Mr.Y.S.Shinde A.P.P. for the State
in Cri.Appl.No. 5912 of 2005
Mr.R.S.Khadapkar A.P.P. for the State
in Cri.Appl.No. 5913 of 2005
...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPT. 14,2005

P.C.

1. Heard the learned advocate for the applicants and the learned A.P.P. for the State in both the matters.

2. The applicants are seeking quashing of process issued by the learned Judicial Magistrate, F.C.Kalyan by order dated 9.8.2004. The said

process was issued under Section 138 of Negotiable Instruments Act in C.C.No.1386 and 1387 of 2004.

3. The learned advocate for the applicants states that there is nothing in the complaint to show that the accused persons were incharge of and were responsible to the company for the conduct of the business and hence, as such, they cannot be said to be liable for the offence under Section 138 of N.I.Act.

4. On going through the complaint, I find that it is stated therein in para no.2 that applicant no.2 is the senior Director, the applicant no.3 Mr.Lalit Sahani is Managing Director and the applicant no.4 Sujata Salian is authorised signatory (Commercial Officer) and the applicant no.5 Mr. Julian Lampert J.is Purchase Engineer of the Precimax Engineers Ltd. All the applicants are the responsible Officers who are looking after day to day affairs of the company. On behalf of Precimax Engineers Ltd. the accused purchased ACC Refractories Ltd. make Firecrete Super (Castable) from the complainant. Thereafter it is stated in the

complaint that on behalf of accused no.1, the accused persons had purchased the goods from the complainant and on behalf of said Company, the accused issued cheque in question in favour of complainant. On reading the averments in para nos.2 and 3 and the other averments in the complaint, I find that necessary ingredients have been made out in the complaint.

5. The Supreme Court in the case of **K.P.G. Nair Vs. Jindal Menthol India Ltd.** reported in **JT 2000 (Suppl.) SC 519,** has observed that though the words of Section 141(1) of the said Act need not be incorporated in a complaint as magic words, substance of the allegations read as a whole should answer and fulfil the requirements of the ingredients of the said provision. In the present case, on reading the complaint as a whole, it is clear that according to the complainant, the applicant was in charge of and was responsible to the company for the conduct of its business. In the present case, on reading the averments in para Nos.2 and 3 of the complaint and other averments in the complaint, I find that ingredients of Section

141 of Negotiable Instruments Act have been made out in the complaint.

6. Thereafter, it is submitted that the entire amount of the cheque was paid and the applicants were not under any legal obligation in respect of the cheque in question. In respect of this contention, it would be pertinent to note the observations of the Supreme Court in the case of **A.V.Moorthy Vs. P.S.Nagabasavanna reported in 2002 Cri.L.J. 1479.** In the said case, the Supreme Court has observed that the dismissal of the complaint on the ground that the cheque drawn was in respect of the debt or liability which was not legally enforceable is illegal and erroneous at the initial stage of enquiry. The Supreme Court has further observed that the said question is a mixed question of law and fact and hence, the trial would be necessary. In view of the observations of the Supreme Court quoted above, I do not think that this is a fit case to set aside the process or to quash the complaint.

7. Thereafter, it is submitted by Mr.Chalke, the

learned advocate for the applicants that in the said case the Magistrate has ordered all the applicants to furnish two sureties of Rs.2000/- each. Mr.Chalke has submitted that the learned Magistrate had directed the applicants to execute P.R.Bond of Rs.2000/- each which they have executed and the applicants have also deposited the amount of Rs.2000/- as cash deposit as directed by the Court and in this view of the matter, the order to furnish two sureties of Rs.2000/- each by all the applicants is oppressive. I do not think that the direction of the learned Magistrate to be oppressive because the sureties are only for the amount of Rs.2000/-. Looking to these facts, the said order of the learned Magistrate cannot be said to be oppressive, illegal or erroneous. Hence, I am not inclined to set aside the said order, however, I am inclined to grant liberty to the applicants that instead of two sureties of Rs.2000/-, the applicants may furnish one surety in the sum of Rs.4000/-.

8. Applications are disposed of.

[V.K.TAHILRAMANI,J.]